

Message Text

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ORIGIN EA-09

INFO OCT-01 ISO-00 L-03 EB-07 ERDA-05 AID-05 CEA-01

CIAE-00 CIEP-01 COME-00 DODE-00 FEAE-00 FPC-01 H-02

INR-07 INT-05 NSAE-00 NSC-05 OMB-01 PM-04 USIA-06

SAM-01 OES-06 SP-02 SS-15 STR-04 TRSE-00 /091 R

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EB/ORF/FSE - MR. RASE

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P 271749Z APR 76

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA PRIORITY

C O N F I D E N T I A L STATE 101662

E.O. 11652: GDS

TAGS: ENRG, EINV, ID

SUBJECT: USG TAXATION OF INCOME FROM OVERSEAS OPERATIONS
OF U.S. OIL COMPANIES

REF: JAKARTA 5389

1. WE DISCUSSED SUGGESTION CONTAINED PARA 5 REFTEL WITH
TREASURY. THERE IS NO OBJECTION FOR PROPOSING ALTERNA-
TIVE ARRANGEMENT FOR IRS REVIEW SO AS TO AVOID TAX
PROBLEM. HOWEVER IT SHOULD BE U.S. COMPANIES, AS U.S.
TAX SUBJECTS, WHO SHOULD TAKE MATTER UP WITH IRS. THEY
WOULD BE ADVISED TO INVITE GOI LEGAL ADVISER IN WASHINGTON
TO PARTICIPATE SO THAT HE LEARNS FIRST HAND IRS REQUIRE-
MENTS. (FYI: WIJARSO'S ARGUMENT THAT "WE PAY THEM THEIR
SHARE OF OIL, THEY DON'T PAY US", REPORTED IN PARA 4 REFTEL
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WOULD NOT ITSELF HELP COMPANIES SINCE THEY WOULD BE

LIABLE FOR U.S. TAX ON THEIR SHARE OF THE OIL AND SINCE
ISSUE IS TAX CREDIT ON OTHER PART OF OIL USED TO DIS-
CHARGE GOI INCOME TAX LIABILITY. END FYI).

2. ADJUSTING CONTRACTS, IF ACCEPTABLE TO BOTH GOI AND
COMPANIES, WOULD NATURALLY ONLY AFFECT PROSPECTIVE BUT
NOT RETROACTIVE TAXES. IT IS AS YET UNDECIDED WHETHER
IRS RULING WILLBE RETROACTIVE. WHILE THERE IS FULL

RECOGNITION OF IMPORTANCE OF POLICY IMPLICATIONS OF
RULING, QUESTION OF RETROACTIVITY WILL BE DETERMINED
ON LEGAL GROUNDS. COMPANIES HAVE BEEN ASKED TO SUBMIT
JUSTIFICATION AND ARGUMENTATION WHY THEY CONSIDER
PRODUCTION SHARING AGREEMENTS CREDITABLE AGAINST U.S.
TAXES. THEY ARE EXPECTED TO SUBMIT THEIR VIEWS WITHIN
THE NEXT FEW DAYS. WE RAISED QUESTION WITH TREASURY
WHETHER CONSULTING ON AMENDING AGREEMENTS MAY ADVERSELY
PREJUDGE RETROACTIVITY ISSUE AND WERE ASSURED THIS NOT
THE CASE.

3. IN LIGHT OF ABOVE RECOMMEND YOU TELL WIJARSO AND
WIDJOJO THAT WE EXPECT THAT COMPANIES WILL SOON CONSULT
WITH IRS ON HOW AGREEMENTS WITH GOI COULD BE AMENDED TO
MEET IRS CONDITIONS. AT THAT TIME IT WOULD BE USEFUL
IF GOI LEGAL ADVISER COULD PARTICIPATE IN CONSULTATIONS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PETROLEUM PRODUCTION, PROFIT SHARING, INCOME TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 27 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE101662
Document Source: CORE
Document Unique ID: 00
Drafter: AGEBER:LRR
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760159-1015
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760417/aaaaanzh.tel
Line Count: 87
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 JAKARTA 5389
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 24 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 MAY 2004 by greeneet>; APPROVED <25 MAY 2004 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: USG TAXATION OF INCOME FROM OVERSEAS OPERATIONS OF U.S. OIL COMPANIES
TAGS: ENRG, EINV, ID, US, IRS-2
To: JAKARTA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006